

**GL&B INSTITUTE FOR MANAGEMENT TRAINING AND STUDIES**  
**Global Business and Legal Strategies Project**  
**Research and Developments Report: May 2012**

**INTERNATIONAL ORGANIZATIONS AND INSTITUTIONS:  
THE WORLD TRADE ORGANIZATION**

By Alan S. Gutterman<sup>1</sup>

*Abstract*

*This report provides a brief introduction to the World Trade Organization (“WTO”), the preeminent multilateral initiative focusing on establishing procedures for opening international trade. The report describes some of the main WTO agreements and the current status of negotiations to further reduce barriers to free trade.*

The World Trade Organization (WTO) is the successor to the General Agreement on Tariffs and Trade (GATT), which was a multilateral initiative involving over 100 countries (Contracting Parties) that conducted regular multilateral trade negotiations (MTN) aimed at opening international trade. One of the overriding principles of GATT was “most favored nation,” or “MFN,” treatment, and the requirement that each Contracting Party accord unconditional MFN status to the other Contracting Parties. This meant that the products exported by one Contracting Party to another Contracting Party were to be treated no less favorably than the domestic products of the importing Contracting Party under that Party's domestic laws and regulations relating to sale, internal resale, purchase, transportation and use. This requirement of non-discrimination is often referred to as “national treatment.” In addition, while Contracting Parties could impose duties, taxes or other charges, they were prohibited from placing other prohibitions or restrictions on imports from Contracting Parties and specific mention was made of a ban on the use of “quotas, import or export licenses or other measures” to restrict imports from a Contracting Party. Exceptions were permitted, however, to allow Contracting Parties to impose antidumping and countervailing duties<sup>[1]</sup> in situations where the actions of other Contracting Parties cause or threaten material injury to an established industry of the Party imposing the duty. Also, in general, less developed

---

<sup>1</sup> The material in this report appears in *Going Global: A Guide to Building an International Business (2011 Edition)* by Alan S. Gutterman and Robert L. Brown at § 2:12 and is presented with permission of Thomson Reuters/West. Copyright 2012. Thomson Reuters/West. For more information or to order call 1-800-762-5272. Alan Gutterman is the Director of the GL&B Institute for Management Training and Studies [[www.managingfordevelopment.org](http://www.managingfordevelopment.org)], which publishes the Global Business and Legal Strategies Website and Blog [[www.alangutterman-goingglobal.com](http://www.alangutterman-goingglobal.com)]. Inquiries about this report should be addressed to Dr. Gutterman at [agutterman@alangutterman.com](mailto:agutterman@alangutterman.com) and further information about him is available at [www.alangutterman.com](http://www.alangutterman.com).

countries have been afforded more time to adjust to required changes in global trade practices, greater flexibility, and special privileges.

One of the most interesting features of GATT was the commitment among the Contracting Parties to meet “from time to time” for MTN to seek reductions in tariff levels and other barriers to international trade “on a reciprocal and mutually advantageous basis.” Eight meetings, or “Rounds,” were held from 1947, when GATT was formed by 22 countries (including the U.S.) signing a Protocol of Provisional Application of the General Agreement on Tariffs and Trade, through 1994. The initial Rounds concentrated first on item-by-item tariff reductions and, as time went by, on several areas of non-tariff barrier trade restraints. The “Uruguay Round,” which began in 1986 and ended in 1994, included separate negotiations on trade in goods and on trade in services and was marked by a decided expansion in topics subject to negotiation to include such diverse areas as agriculture; intellectual property rights and counterfeit goods; textiles; investment policies and dispute resolution.

One of the most important byproducts of the Uruguay Round was the Agreement Establishing the World Trade Organization and its Annexes, which include the General Agreement on Tariffs and Trade 1994 (GATT 1994), a series of Multilateral Trade Agreements (the “Covered Agreements”) which are binding on Members of the WTO, and a series of Plurilateral Trade Agreements that are not binding on Members of the WTO (GATT 1994 and its Annexes are collectively referred to as the “WTO Agreement”). GATT 1994 incorporates most of the provisions of the original GATT entered into in 1947, and the WTO is guided by the decisions, procedures and customary practices under GATT. GATT 1994 covers a number of obligations on countries with respect to the content and enforcement of their laws and regulations pertaining to the treatment of foreign goods and services and specifically promotes the fundamental principles of “most-favored-nation” (“MFN”) status and “national treatment.”

The Multilateral Trade Agreements cover a number of different areas, including services; subsidies and countervailing measures; agriculture; sanitary and phyto-sanitary measures; technical barriers to trade; anti-dumping measures; safeguards; trade-related investment measures; government procurement; and intellectual property rights. Details of some of the more significant Multilateral Trade Agreements are as follows:

- The General Agreement on Trade in Services (“GATS”): The GATS imposes rules relating to the regulation of trade in services. Regulations are broken out by reference to the type of service and the manner in which the service is delivered. For example, separate rules are provided for services that are provided across borders, consumed across a border, provided in a foreign country through a commercial presence or provided in a foreign country through the presence of natural persons. The general principal is that WTO Members are obligated to provide MFN treatment to service providers from other countries and must grant access to their domestic services market and national treatment in those services sectors that the member has listed on its specific schedule. Traditionally GATT (and the WTO after that) has focused on trade in goods and the rules and regulations with respect to services are a relatively

recent concept and thus lack the detail that is found in the regulatory regime relating to goods.

- The Agreement on Subsidies and Countervailing Measures (“ASCM”): The ASCM supplements GATT sanctions in this area by prohibiting WTO Members from granting subsidies on the express or implied condition that the resulting products must be exported. In addition, the ASCM permits WTO Members to object to other types of subsidies that cause “adverse effects” in the industry of another Member. Subsidization occurs when a government provides its producer(s) with financial contributions that give the producer(s) an advantage in the market place. This support may, in turn, negatively affect other countries' industries and trade.
- The Agreement on Agriculture: Agricultural products are an area of special significance to many WTO Members, particularly developing countries, and thus it was believed that a separate agreement and set of rules relating to agriculture would be useful. The Agricultural Agreement is intended to facilitate market access, reduce domestic support and enhance export competition. With regard to market access the Agricultural Agreement seeks to improve the transparency of protection measures and facilitate their reduction, and open domestic markets to more imports. The Agriculture Agreement also aims to cut export subsidies (i.e., the possibility for a country to export its agricultural products at prices below those on the domestic market).
- The Agreement on Sanitary and Phyto-Sanitary Measures (“SPS Agreement”): SPS measures is a general term for a variety of regulations on trade in food stuffs and feed and other natural products to protect human, animal and plant health in the importing country. The SPS Agreement covers measures to protect human life from risks arising from additives, toxins, plant and animal-carried diseases; protect animal life from the risks arising from additives, toxins, pest and diseases, disease-causing organisms; protect plant life from risks arising from pests, diseases, disease-causing organisms; and protect a country from the risks arising from damages caused by the entry, establishment or spread of pests. In general, the SPS Agreement seeks to ensure that any measures described above are not used by WTO Members as disguised restrictions on trade and are based on sound scientific principles.
- The Agreement on Technical Barriers to Trade (“TBT Agreement”): The TBT Agreement covers restrictions placed on imports or exports based on product standards and technical regulations (e.g., labeling requirements), and sets out the conditions upon which such standards and regulations may be applied. In general, the TBT Agreement requires that product standards and technical regulations must be applied in a non-discriminatory fashion and calls for WTO Members to extend MFN and national treatment to standards and regulations in the course of drafting and administration. In order to reduce the likelihood of problems in this area countries are urged to restrict the adoption of product standards and technical regulations to those cases where there is a legitimate health, safety, product quality or environmental protection purposes.

- The Anti-Dumping Agreement: Article VI of the GATT allows WTO Members to apply anti-dumping measures (i.e., measures against imports of a product at an export price below its “normal value,” which is usually the price of the product in the domestic market of the exporting country) if such dumped imports cause injury to a domestic industry in the territory of the importing Member. The Anti-Dumping Agreement provides more detailed rules governing the application of such measures including rules for determining that a product is dumped, the criteria to be taken into account in a determination that dumped imports cause injury to a domestic industry, the procedures to be followed in initiating and conducting anti-dumping investigations, and the implementation and duration of anti-dumping measures. The Anti-Dumping Agreement also clarifies the role of dispute settlement panels in disputes relating to anti-dumping actions taken by domestic authorities.
- The Safeguards Agreement: Under the GATT, a WTO Member is permitted to take a “safeguard” action—such as restricting imports of a product temporarily—to protect a specific domestic industry from an unforeseen increase of imports of any product which is causing, or which is likely to cause, serious injury to the industry. Since safeguards are not used to reduce the effects of any unfair trade practices the WTO is obviously concerned about their use and the Safeguards Agreement imposes limitations in this area through the establishment of prohibitions against so-called “grey area” measures and by fixing a “sunset clause” on all safeguard actions.
- The Trade-Related Investment Measures Agreement (“TRIMs”): The TRIMS Agreement applies the WTO national treatment principle by requiring all WTO Members to treat foreign enterprises under the same terms and conditions as it treats its domestic enterprises and also sets out a process for the reduction and eventual elimination of all quantitative restrictions on imported goods, including tariffs, non-tariff barriers, as well as other policy impediments.
- The Agreement on Government Procurement (“AGP”): The AGP is designed to make laws, regulations, procedures and practices regarding government procurement more transparent and to ensure they do not protect domestic products or suppliers, or discriminate against foreign products or suppliers. The agreement has 28 members and has two elements—general rules and obligations (most of which deal with tendering procedures), and schedules of national entities in each WTO Member country whose procurement is subject to the agreement.
- The Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIPs”): The TRIPs Agreement sets down minimum standards for most forms of intellectual property regulation within all WTO Members and is intended to supplement, rather than override, the terms of any international convention or multilateral agreement that might be reached under the auspices of the World Intellectual Property Organization.[\[2\]](#)

The essential role of the WTO is to facilitate the implementation, administer the

operation and further the objectives of the Covered Agreements. The WTO Agreement serves as a charter for the WTO and also creates, for the first time, an institutional structure and procedural guidelines for executing the role and activities of the WTO. However, while the WTO, through its Ministerial Conferences, General Council deliberations, and its various councils, bodies and committees, can discuss, negotiate and adopt new multilateral agreements, the WTO is not authorized to bring actions against Members on its own volition. The WTO Agreement provides that only WTO Members have the right to bring actions based on an alleged violation of the terms of one of the Covered Agreements, and the process for resolving such disputes is laid out in the Understanding on Rules and Procedures Governing the Settlement of Disputes. Dispute resolution is an important activity conducted by the Dispute Settlement Body (DSB), which includes all of the Members of the WTO, and involves five stages: consultation; panel establishment, investigation and report; appellate review of the panel report; adoption of the panel and appellate decision; and implementation of the decision. Binding arbitration is also available as an alternative to the formal dispute resolution process when both parties are willing. Remedies include directing violators to bring their actions into compliance with Covered Agreements within a “reasonable time” (usually 15 months), compensation to the injured party and, in extreme circumstances, authorization from the DSB for the injured party to “retaliate” against the violator.

The latest set of trade negotiations within the WTO is referred to as the “Doha Round,” named for the Fourth Ministerial Conference held in November 2001 in Doha, Qatar. At that meeting, WTO members established the agenda for further WTO negotiations and also agreed to work on other issues, in particular the implementation of agreements that had already been approved by the members. The entire package is called the Doha Development Agenda (DDA). The Fifth Ministerial Conference in Cancún, Mexico, in September 2003, was intended as a stock-taking meeting where members would agree on how to complete the rest of the negotiations. But the meeting was soured by discord on issues of export credits and subsidies on agricultural commodities. Real progress on these issues was not evident until a breakthrough was achieved in July 2004 when the USTR and the EU reached agreement on eliminating billions of dollars of such credit and subsidies in exchange for what were anticipated to be reductions in tariffs and other market access restrictions for U.S. goods entering those markets. While this was an important step, it was not a final agreement and only served as a means for the parties to continue their discussions with the goal of reaching such an agreement by January 1, 2005. Unfortunately, this deadline was missed, as was a subsequent unofficial target of ending negotiations by the close of 2005. Further progress in narrowing members' differences was made at the Hong Kong Ministerial Conference in December 2005, but some gaps remained unbridgeable and Director-General Pascal Lamy suspended the negotiations in July 2006. Efforts then focused on trying to achieve a breakthrough in 2007; however, hopes were dashed again in June 2007 when talks among trade and agricultural ministers from the U.S., the EU, Brazil and India on slashing farm subsidies and lowering hurdles for goods crossing borders disintegrated. The latest major effort to reach a final agreement ended without success in Geneva in July 2008 as China and India insisted on their right to protect their fragile farming sectors and refused to bow to U.S. demands on agricultural subsidies. The attitude of China and India was partially driven

by factors outside of the control of the U.S.—economic hardships in rural areas of both countries that threaten to cause political problems for the national leadership unless it moves strongly to protect farmers from competition with imports from the U.S. and other countries. Current information on the status of the Doha Round, as well as U.S.-related trade complaints being heard within the WTO, can be found at the WTO website. The WTO website also contains information on statements made by various parties to the Doha Round discussions from time-to-time since July 2008 regarding the status of negotiations on issues such as farming, non-agricultural market access, intellectual property rights and industrial goods.

The collapse of the Doha Round discussions may well be signal that it is no longer practical to expect that 150 countries, each with their own specific and widely divergent economic and political goals, can reach meaningful agreements on sensitive international trade issues. In fact, a likely possible future scenario, even as the WTO attempts to move forward, is that countries will turn more and more attention to negotiating and completing bilateral and regional agreements. If that is the case, any global deal that may be struck may actually be an agreement between groups of regional partners that have aligned themselves together based on shared interests and concerns. It has been noted that the agreements reached during previous trade rounds were typically driven by the interests and overwhelming economic power of the U.S. and other industrialized countries; however, the rise of China and India and their willingness to act as strong advocates for certain sectors of their economies and developing countries has clearly tipped the balance of power within the WTO. Another factor to consider is that there is by no means a political consensus in the U.S. and other countries about the value of “free trade” and this has led to delays in approving proposed bilateral agreements.